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Supreme Court of the United States

October Term 1952

No. 381

AMERICAN PRESIDENT LINES, LIMITED,
Petitioner

vs.

IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE, UNITED STATES OF AMERICA, ET AL.,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

AMERICAN PRESIDENT LINES, LIMITED

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TO THE HONORABLE, THE CHIEF JUSTICE AND THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, American President Lines, (Ltd.), a Delaware corporation, prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the District of Columbia Circuit rendered July 9, 1952.

STATEMENT OF JURISDICTION

Jurisdiction to review this case upon writ of certiorari is conferred upon this Court by 28 U.S.C. § 1254(1); 62 Stat. 928.

QUESTION PRESENTED

Has the United States Court of Appeals for the District of Columbia Circuit jurisdiction to hear and decide a petition for review of a final agency action of the United States Immigration and Naturalization Service?

STATEMENT OF FACTS

The United States Immigration and Naturalization Service promulgated certain Rules on May 14, 1952 (Trans. fol. 2-7, incl. p. 1-6). In the Rules the term "alien" is defined (Trans. fol. 3 and 4, p. 3). The definition in the Rules is in irreconcilable conflict with the definition in the Statute (§ 1, First Quota Act of 1917; 39 Stat. 874; 8 U.S.C.A. 173). The statutory definition of "alien" excludes "citizens and nationals of the United States". The Rules definition includes "all citizens and nationals" who seek admission into the United States on the ground that they are citizens or nationals. The Rules also impose detention expenses on aliens who have visas issued by a consular agent within 60 days of their foreign departure. The statute expressly forbids the assessment and collection of detention expenses in such circumstances (§ 3, Act of 1944; 58 Stat. 817; 8 U.S.C.A. 216).

Petition for review was filed by American President Lines, Ltd., a person legally wronged, adversely affected, and a party aggrieved (Trans. fol. 1-12, incl., pp. 1-10). The petition was filed in the United States Court of Appeals for the District of Columbia. A motion to dismiss was filed, argued and granted. The ground for dismissal was that the Court had no jurisdiction over the case (Trans. fol. 21-22, p. 17).

REASONS FOR ALLOWANCE OF THE WRIT

1. This case presents an important question of statutory construction which has never been decided by the Supreme Court of the United States, to-wit, a final judicial determination of the meaning of the Administrative Procedure Act, particularly Section 10 of the Administrative Procedure Act (5 U.S.C.A. 1009; 60 Stat. 243, § 10). The learned United States Court of Appeals for the District of Columbia, in conjunction with rulings in other circuits, has construed the words "any applicable form of legal action . . . in any court of competent jurisdiction" to mean "an original action in the United States District Court for the District of Columbia". This construction violates the Administrative Procedure Act (*supra*) and nullifies its broad, remedial purpose.

2. The decision sought to be reviewed is irreconcilable with settled law as pronounced by the Supreme Court of the United States and in the various circuits in that it strictly construes a remedial statute and alters the plain wording thereof under the guise of construing it. This conflict should be eliminated by a decision of the Supreme Court of the United States.

3. The interpretations of the statute are in conflict in the United States Circuit Courts and a decision of the Supreme Court of the United States is necessary to resolve the conflict.

The Fifth Circuit has held that Sec. 10 of the Administrative Procedure Act (*supra*) does not deal with appellate court review but with review by an original action in a court of competent jurisdiction. *City of Dallas Texas* v. *Rentzel*, 172 F. 2nd 122.

The Third Circuit has held that a petition to Review, which is an appellate procedure and not an original action, is an appropriate form of relief. *United States* v. *Carusi*, 166 F. 2nd 457.

The Fifth Circuit has held that the fact that the United States Court of Appeals was not specifically named in the Administrative Procedure Act (*supra*) deprives that court of jurisdiction to act in review proceedings but permits the same silence to clothe the equally unnamed and statutory United States District Courts with complete jurisdiction.

4. It has been the contention of the Department of Justice and of a great many of the administrative agencies that the Administrative Procedure Act (supra) merely codified existing remedies and did not expand judicial review. *Sen. Rep. No. 752, 79th Cong. 1st Session* (1946) P. 43; *"The Federal Administrative Procedure Act and the Administrative Agencies"* P. 300 (Proceedings of an Institute conducted at New York University School of Law, Feb. 1-8, 1947. Edited by George Warren, New York University School of Law, 1947).

It is essential to the enjoyment by the citizens of the United States of the broad remedial provisions of the Administrative Procedure Act (*supra*) that this fallacy current in the courts and in the agencies throughout the United States be struck down by a decision of the Supreme Court of the United States and that the broad remedial provisions of the statute be finally confirmed by a decision of this Honorable Court.

5. The factual pattern of *Blackmar* v. *Guerre*, 96 L. ed. adv. 315 (decided March 3, 1952), justified this Honorable Court in assuming but not deciding that Commission action was reviewable under Section 10 of the Administrative Procedure Act *(supra)*. The doubt thus cast as to the right of review granted generally by the Act should be cleared by a decision of this Honorable Court in a case where the declaration will be opinion and not dictum.

WHEREFORE, petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Court directed to the United States Court of Appeals for the District of Columbia Circuit commanding that Court to certify and to send to this Court, on a day certain to be therein named, a full and complete transcript of the record and all proceedings had in this case, numbered and titled on its Docket No. 11455, to the end that this case may be reviewed and determined by this Court; that the said judgment of the United States Court of Appeals for the District of Columbia Circuit may be reversed by this Court; and that your petitioner may have such other and further relief in the premises as may seem just and proper.

Respectfully submitted,

AMERICAN PRESIDENT LINES, LIMITED

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